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 AVIS BUDGET GROUP, INC., AVIS BUDGET  
 CAR RENTAL, LLC, and AB CAR RENTAL  
 SERVICES, INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

TYWAIN WILLIS, on behalf of himself,  
 all others similarly situated, and the general  
 public,

Plaintiff,

v.

AVIS BUDGET GROUP, INC., a  
 Delaware corporation, AVIS BUDGET  
 CAR RENTAL, LLC, a Delaware limited  
 liability company; AB CAR RENTAL  
 SERVICES, INC., a Delaware corporation;  
 and DOES 1-50, inclusive,

Defendants.

Case No. 14-cv-03926-HSG

(Alameda Superior Court Case No.  
 RG14734826)

**STIPULATED PROTECTIVE ORDER  
 WITH CLAWBACK AGREEMENT**

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Plaintiff TYWAIN WILLIS (“Plaintiff”) and Defendants AVIS BUDGET GROUP, INC., AVIS BUDGET CAR RENTAL, LLC, and AB CAR RENTAL SERVICES, INC. (“Defendants”) (collectively with Plaintiff as the “Parties”) agree to the following procedures to protect confidential, proprietary or private information.

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order.

The Parties agree to produce such documents only on the agreement that such “CONFIDENTIAL” Information or Items will be disclosed only as provided herein.

The Parties have agreed to stipulate to protect certain privileged and otherwise protected documents, data (including electronically stored information) and other information, including without limitation, metadata, against claims of waiver and inadvertent production in the event they are produced during the course of this litigation whether pursuant to a Court Order, a party’s discovery request or informal production.

The Parties wish to comply with discovery deadlines and complete discovery as expeditiously as possible, while preserving and without waiving any evidentiary protections or privileges applicable to the information contained in the Discovery Material produced, including as against third parties and other federal and state proceedings, and in addition to their agreement, need the additional protections of a court order under Federal Rule of Evidence (“FRE”) 502(d) and (e) to do so.

In order to comply with applicable discovery deadlines, a party may be required to produce certain categories of Discovery Material that have been subject to minimal or no attorney review. This Stipulated Protective Order is designed to foreclose any arguments that by making such Disclosure, the disclosure or production of Discovery Material subject to a legally recognized claim of privilege, including without limitation the attorney-client privilege, work-product doctrine,

1 or other applicable privilege:

2 (a) was not inadvertent by the Producing Party;

3 (b) that the Producing Party did not take reasonable steps to prevent the disclosure  
4 of privileged Protected Material

5 (c) that the Producing Party did not take reasonable or timely steps to rectify such  
6 Disclosure; and/or

7 (d) that such disclosure acts as a waiver of applicable privileges or protections  
8 associated with such Discovery Material.

9 Because the purpose of this Stipulated Protective Order is to protect and preserve  
10 privileged Discovery Material, the Parties agree they are bound as follows from and after the date  
11 their counsel have signed it, even if such execution occurs prior to Court approval.

12 The Parties seek the entry of an Order, pursuant to Federal Rule of Civil Procedure  
13 (“FRCP”) 26(c), governing the disclosure of documents and information therein pertaining to  
14 “CONFIDENTIAL” Information or Items on the terms set forth herein, as well as an Order, pursuant  
15 to FRE 502, governing the return of inadvertently produced Protected Material and data and  
16 affording them the protections of FRE 502(d) and (e), on the terms set forth herein. The Parties  
17 acknowledge that this Stipulated Protective Order does not confer blanket protections on all  
18 disclosures or responses to discovery and that the protection it affords from public disclosure and use  
19 extends only to the limited information or items that are entitled to confidential treatment under the  
20 applicable legal principles. The Parties further acknowledge, as set forth in Section 12.3, below, that  
21 this Stipulated Protective Order does not entitle them to file confidential information under seal;  
22 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be  
23 applied when a party seeks permission from the court to file material under seal.

## 24 2. DEFINITIONS

25 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
26 information or items under this Order.

27 2.2 “CONFIDENTIAL” Information or Items (“Confidential Information”): information  
28 (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection

1 under Federal Rule of Civil Procedure 26(c).

2 2.3 Counsel (without qualifier): Outside Counsel of Record and In-House Counsel (as  
3 well as their support staff).

4 2.4 Designating Party: a Party or Non-Party that designates information or items that it  
5 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

6 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium  
7 or manner in which it is generated, stored, or maintained (including, among other things, documents,  
8 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
9 responses to discovery in this matter.

10 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to  
11 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
12 consultant in this action.

13 2.7 In-House Counsel: attorneys who are employees of a party to this action. In-House  
14 Counsel does not include Outside Counsel of Record or any other outside counsel.

15 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal  
16 entity not named as a Party to this action, including putative class members.

17 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action  
18 but are retained to represent or advise a party to this action and have appeared in this action on  
19 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

20 2.10 Party: any party to this action, including all of its officers, directors, employees,  
21 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

22 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
23 Material in this action.

24 2.12 Professional Vendors: persons or entities that provide litigation support services  
25 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
26 storing, or retrieving data in any form or medium) and their employees and subcontractors.

27 2.13 Protected Material: any Disclosure or Discovery Material or other documents or  
28 materials that are subject to attorney-client privilege, attorney-work product doctrine, or other

1 applicable privilege whether or not designated as “CONFIDENTIAL”.

2 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
3 Producing Party.

4 3. SCOPE

5 This Stipulated Protective Order will be entered pursuant to FRCP 26(c) and FRE 502. The  
6 protections conferred by this Stipulated Protective Order cover not only Protected Material and  
7 Confidential Information (as defined above), but also (1) any information copied or extracted from  
8 the same; (2) all copies, excerpts, summaries, or compilations of the same; and (3) any testimony,  
9 conversations, or presentations by Parties or their Counsel that might reveal the same. However, the  
10 protections conferred by this Stipulated Protective Order do not cover the following information: (a)  
11 any information that is in the public domain at the time of disclosure to a Receiving Party or  
12 becomes part of the public domain after its disclosure to a Receiving Party as a result of publication  
13 not involving a violation of this Stipulated Protective Order, including becoming part of the public  
14 record through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
15 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
16 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of  
17 Protected Material and/or Confidential Material at trial shall be governed by a separate agreement or  
18 order.

19 4. DURATION

20 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
21 Stipulated Protective Order shall remain in effect until a Designating Party agrees otherwise in  
22 writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1)  
23 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment  
24 herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of  
25 this action, including the time limits for filing any motions or applications for extension of time  
26 pursuant to applicable law.

27 5. DESIGNATING CONFIDENTIAL INFORMATION AND/OR PROTECTED MATERIAL

28 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or

1 Non-Party that designates information or items for protection under this Stipulated Protective Order  
 2 must take care to limit any such designation to specific material that qualifies under the appropriate  
 3 standards. The Designating Party must designate for protection only those parts of material,  
 4 documents, items, or oral or written communications that qualify – so that other portions of the  
 5 material, documents, items, or communications for which protection is not warranted are not swept  
 6 unjustifiably within the ambit of this Order.

7 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown  
 8 to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily  
 9 encumber or retard the case development process or to impose unnecessary expenses and burdens on  
 10 other parties) expose the Designating Party to sanctions.

11 If it comes to a Designating Party's attention that information or items that it designated for  
 12 protection do not qualify for protection, that Designating Party must promptly notify all other Parties  
 13 that it is withdrawing the mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in this Stipulated  
 15 Protective Order (see, *e.g.*, second paragraph of Section 5.2(a) below), or as otherwise stipulated or  
 16 ordered, Disclosure or Discovery Material that qualifies for protection under this Stipulated  
 17 Protective Order must be clearly so designated before the material is disclosed or produced.

18 Designation in conformity with this Stipulated Protective Order requires:

19 (a) for information in documentary form (*e.g.*, paper or electronic documents, but  
 20 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
 21 affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion  
 22 or portions of the material on a page qualifies for protection, the Producing Party also must clearly  
 23 identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins) when  
 24 feasible.

25 A Party or Non-Party that makes original documents or materials available for  
 26 inspection need not designate them for protection until after the inspecting Party has indicated which  
 27 material it would like copied and produced. During the inspection and before the designation, all of  
 28 the material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting

1 Party has identified the documents it wants copied and produced, the Producing Party must  
 2 determine which documents, or portions thereof, qualify for protection under this Stipulated  
 3 Protective Order. Then, before producing the specified documents, the Producing Party must affix  
 4 the “CONFIDENTIAL” legend to each page that contains Confidential Information and/or Protected  
 5 Material when feasible. If only a portion or portions of the material on a page qualifies for  
 6 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
 7 appropriate markings in the margins).

8 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
 9 Designating Party identify on the record, before the close of the deposition, hearing, or other  
 10 proceeding, all protected testimony.

11 (c) for information produced in some form other than documentary and for any other  
 12 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
 13 containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a  
 14 portion or portions of the information or item warrant protection, the Producing Party, to the extent  
 15 practicable, shall identify the protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 17 designate qualified information or items does not, standing alone, waive the Designating Party’s  
 18 right to secure protection under this Stipulated Protective Order for such material. Upon timely  
 19 correction of a designation, the Receiving Party must make reasonable efforts to assure that the  
 20 material is treated in accordance with the provisions of this Stipulated Protective Order.

## 21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
 23 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
 24 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
 25 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
 26 confidentiality designation by electing not to mount a challenge promptly after the original  
 27 designation is disclosed.

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1           6.2    Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
2 by providing written notice of each designation it is challenging and describing the basis for each  
3 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
4 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
5 of the Stipulated Protective Order. The Parties shall attempt to resolve each challenge in good faith  
6 and must begin the process by conferring directly (in voice to voice dialogue; other forms of  
7 communication are not sufficient) within 14 days of the date of service of notice. In conferring, the  
8 Challenging Party must explain the basis for its belief that the confidentiality designation was not  
9 proper and must give the Designating Party an opportunity to review the designated material, to  
10 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the  
11 chosen designation. A Challenging Party may proceed to the next stage of the challenge process only  
12 if it has engaged in this meet and confer process first or establishes that the Designating Party is  
13 unwilling to participate in the meet and confer process in a timely manner.

14           6.3    Judicial Intervention. If the Parties cannot resolve a challenge without court  
15 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
16 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the  
17 initial notice of challenge or within 14 days of the Parties agreeing that the meet and confer process  
18 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a  
19 competent declaration affirming that the movant has complied with the meet and confer  
20 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a  
21 motion including the required declaration within 21 days (or 14 days, if applicable) shall  
22 automatically waive the confidentiality designation for each challenged designation. In addition, the  
23 Challenging Party may file a motion challenging a confidentiality designation at any time if there is  
24 good cause for doing so, including a challenge to the designation of a deposition transcript or any  
25 portions thereof. Any motion brought pursuant to this provision must be accompanied by a  
26 competent declaration affirming that the movant has complied with the meet and confer  
27 requirements imposed by the preceding paragraph.

28           The burden of persuasion in any such challenge proceeding shall be on the Designating

1 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
 2 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.  
 3 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to  
 4 retain confidentiality as described above, all parties shall continue to afford the material in question  
 5 the level of protection to which it is entitled under the Producing Party's designation until the court  
 6 rules on the challenge.

7 7. ACCESS TO AND USE OF CONFIDENTIAL INFORMATION AND/OR PROTECTED  
 8 MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Confidential Information and Protected  
 10 Material that is disclosed or produced by another Party or by a Non-Party in connection with this  
 11 case only for prosecuting, defending, or attempting to settle this litigation. Such Confidential  
 12 Information and Protected Material may be disclosed only to the categories of persons and under the  
 13 conditions described in this Stipulated Protective Order. When the litigation has been terminated, a  
 14 Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

15 Confidential Information and/or Protected Material must be stored and maintained by a  
 16 Receiving Party at a location and in a secure manner that ensures that access is limited to the persons  
 17 authorized under this Order.

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by  
 19 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
 20 information or item designated "CONFIDENTIAL" only to:

21 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
 22 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
 23 information for this litigation;

24 (b) the officers, directors, and employees (including In-House Counsel) of the  
 25 Receiving Party to whom disclosure is reasonably necessary for this litigation;

26 (c) Experts (as defined in this Stipulated Protective Order) of the Receiving Party to  
 27 whom disclosure is reasonably necessary for this litigation and who have signed the  
 28 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material and/or Confidential Information must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(h) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

#### 8. PROTECTED MATERIAL AND/OR CONFIDENTIAL INFORMATION SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Stipulated Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material and/or Confidential Information may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL”

before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S CONFIDENTIAL INFORMATION AND/OR PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Stipulated Protective Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's Confidential Information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's Confidential Information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's Confidential Information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Confidential Information.

10. UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION AND/OR PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Confidential Information and/or Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Confidential Information and/or Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Stipulated Protective Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. CLAWBACK AGREEMENT

Pursuant to FRE 502(d) and (e), the Parties agree to and the Court orders protection of privileged and otherwise Protected Material against claims of waiver (including as against third parties and in other federal and state proceedings) as follows:

(a) The inadvertent disclosure or production of Protected Material by a Producing Party subject to a legally recognized claim of privilege, including without limitation the attorney-client privilege and the work-product doctrine, to a Receiving Party, shall in no way constitute the voluntary disclosure of such Protected Material.

(b) The inadvertent disclosure or production of any Protected Material this action shall not result in the waiver of any privilege, evidentiary protection or other protection associated with such Discovery Material as to the Receiving Party or any third parties, and shall not result in any waiver, including subject matter waiver, of any kind.

(c) If, during the course of this litigation, a Party determines that any Discovery Material produced by another party is or may reasonably be subject to a legally recognizable privilege or evidentiary protection:

(i) The Receiving Party shall: (A) refrain from reading the Protected Material any more closely than is necessary to ascertain that it is privileged or otherwise protected from disclosure; (B) immediately notify the Producing Party in writing that it has discovered

Documents believed to be privileged or protected; (C) specifically identify the Protected Materials by Bates number range or hash value; and, (D) within ten (10) court days of discovery by the Receiving Party, return, sequester, or destroy all copies of such Protected Materials, along with any notes, abstracts or compilations of the content thereof; and (E) within 2 court days of taking the actions identified in subpart (D) above, notify the producing Party of the action taken. To the extent that Protected Material has been loaded into a litigation review database under the control of the Receiving Party, the Receiving Party shall have all electronic copies of the Protected Document extracted from the database. Where such Protected Materials cannot be extracted, destroyed, or separated, they shall not be reviewed, disclosed, or otherwise used by the Receiving Party. Notwithstanding, the Receiving Party is under no obligation to search or review the Producing Party's Discovery Material to identify potentially privileged or work product Protected Materials.

(ii) If the Producing Party intends to assert a claim of privilege or other protection over Documents identified by the Receiving Party as Protected Materials, the Producing Party will, within ten (10) court days of receiving the Receiving Party's written notification described above that identifies the Protected Material by Bates number ,or hash value if no Bates number, inform the Receiving Party of such intention in writing and shall provide the Receiving Party with a log for such Protected Material that is consistent with the requirements of the Federal Rules of Civil Procedure, setting forth the basis for the claim of privilege or other protection. In the event that any portion of a Protected Material does not contain privileged or protected information, the Producing Party shall also provide to the Receiving Party a redacted copy of the document that omits the information that the Producing Party believes is subject to a claim of privilege or other protection. The Producing Party may seek more time if the volume of data or documents is substantial.

(d) If, during the course of this litigation, a Party determines it has produced one or more Protected Material:

(i) The Producing Party may notify the Receiving Party of such inadvertent production in writing, and demand the return of such material. Such notice shall be in writing, however, it may be delivered orally on the record at a deposition, promptly followed up in

1 writing. The Producing Party's written notice will identify the Protected Material inadvertently  
2 produced by bates number range or hash value, the privilege or protection claimed, and the basis for  
3 the assertion of the privilege and shall provide the Receiving Party with a log for such Protected  
4 Material that is consistent with the requirements of the Federal Rules of Civil Procedure, setting  
5 forth the basis for the claim of privilege or other protection. In the event that any portion of the  
6 Protected Material does not contain privileged or protected information, the Producing Party shall  
7 also provide to the Receiving Party a redacted copy of the document that omits the information that  
8 the Producing Party believes is subject to a claim of privilege or other protection.

9 (ii) The Receiving Party must, within five (5) court days of receiving the  
10 Producing Party's written notification described above, return, sequester, or destroy the Protected  
11 Material and any copies, along with any notes, abstracts or compilations of the content thereof.  
12 Destruction shall mean deletion of documents from all databases, applications, and/or file systems in  
13 a manner such that they are not readily accessible without the use of specialized tools or techniques  
14 typically used by a forensic expert. To the extent that Protected Material has been loaded into a  
15 litigation review database under the control of the Receiving Party, the Receiving Party shall have all  
16 electronic copies of the Protected Material extracted from the database. Where such Protected  
17 Materials cannot be extracted, destroyed or separated, they shall not be reviewed, disclosed, or  
18 otherwise used by the Receiving Party.

19 (e) To the extent that the information contained in Protected Material has already  
20 been used in or described in other documents generated or maintained by the Receiving Party prior  
21 to the date of receipt of written notice by the Producing Party as set forth in paragraphs (c)(ii) and  
22 d(i), then the Receiving Party shall sequester such documents until the claim has been resolved. If  
23 the Receiving Party disclosed the Protected Material before being notified of its inadvertent  
24 production, it must take reasonable steps to retrieve it and notify the Producing Party of the identities  
25 of the person(s) to whom the disclosure was made. To the extent the identity of these person(s) is  
26 protected by work product privilege, the Receiving Party may initially disclose the general nature of  
27 the person(s) (*e.g.*, "consultant regarding data analysis"); however, the Producing Party retains the  
28 right to seek the name(s) of such persons should it have a reasonable basis to believe that



1 confidential information from a Protected Document that was inadvertently produced and clawed  
 2 back pursuant to this Order was disclosed and the identity of the person(s) who violated this Order is  
 3 unknown. The court retains the power to order the disclosure of the identity of such persons upon  
 4 motion requesting such relief.

5 (f) The Receiving Party's return, sequestering or destruction of Protected  
 6 Material as provided herein will not act as a waiver of the Requesting Party's right to move for the  
 7 production of the returned, sequestered or destroyed documents on the grounds that the documents  
 8 are not, in fact, subject to a viable claim of privilege or protection. However, the Receiving Party is  
 9 prohibited and estopped from arguing that:

10 (i) the disclosure or production of the Protected Materials acts as a  
 11 waiver of an applicable privilege or evidentiary protection;

12 (ii) the disclosure of the Protected Materials was not inadvertent;

13 (iii) the Producing Party did not take reasonable steps to prevent the  
 14 disclosure of the Protected Materials; or

15 (iv) the Producing Party failed to take reasonable or timely steps to rectify  
 16 the error pursuant to FRCP 26(b)(5)(B), or otherwise.

17 (g) In accordance with Civil Local Rule 79-5, either party may submit Protected  
 18 Materials to the Court under seal for a determination of the claim of privilege or other protection.  
 19 The Producing Party shall preserve the Protected Materials until such claim is resolved. The  
 20 Receiving Party may not use the Protected Materials for any purpose absent this Court's Order.

21 (h) Upon a determination by the Court that the Protected Materials are protected  
 22 by the applicable privilege or evidentiary protection, and if the Protected Materials have been  
 23 sequestered rather than returned or destroyed by the Receiving Party, the Protected Materials shall  
 24 be returned or destroyed within five (5) court days of the Court's order. The Court may also order  
 25 the identification by the Receiving Party of Protected Materials by search terms or other means.

26 (i) Nothing contained herein is intended to, or shall serve to limit a party's right  
 27 to conduct a review of documents, data (including electronically stored information) and other  
 28 information, including without limitation, metadata, for relevance, responsiveness and/or the



1 segregation of privileged and/or protected information before such information is produced to  
2 another party.

3 (j) By operation of the Parties' agreement and Court Order, the Parties are  
4 specifically afforded the protections of FRE 502 (d) and (e).

5 12. MISCELLANEOUS

6 12.1 Right to Further Relief. Nothing in this Stipulated Protective Order abridges the right  
7 of any person to seek its modification by the court in the future.

8 12.2 Right to Assert Other Objections. By stipulating to the entry of this Stipulated  
9 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
10 producing any information or item on any ground not addressed in this Stipulated Protective Order.  
11 Similarly, no Party waives any right to object on any ground to use in evidence of any of the material  
12 covered by this Stipulated Protective Order.

13 12.3 Filing Confidential Information and/or Protected Material. Without written  
14 permission from the Designating Party or a court order secured after appropriate notice to all  
15 interested persons, a Party may not file in the public record in this action any Confidential  
16 Information and/or Protected Material. A Party that seeks to file under seal any Confidential  
17 Information and/or Protected Material must comply with Civil Local Rule 79-5. Confidential  
18 Information and/or Protected Material may only be filed under seal pursuant to a court order  
19 authorizing the sealing of the specific Confidential Information and/or Protected Material at issue.  
20 Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the  
21 Confidential Information and/or Protected Material at issue is privileged, protectable as a trade  
22 secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file  
23 Confidential Information and/or Protected Material under seal pursuant to Civil Local Rule 79-5(d)  
24 is denied by the court, then the Receiving Party may file the information in the public record  
25 pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

26 12.4 Information Security Protections. Any person in possession of another Party's  
27 Confidential Information and/or Protected Material shall maintain a written information security  
28 program that includes reasonable administrative, technical, and physical safeguards designed to

1 protect the security and confidentiality of such Confidential Information and/or Protected Material,  
 2 protect against any reasonably anticipated threats or hazards to the security of such Confidential  
 3 Information and/or Protected Material, and protect against unauthorized access to or use of such  
 4 Confidential Information and/or Protected Material. To the extent a person or party does not have an  
 5 information security program they may comply with this provision by having the Confidential  
 6 Information and/or Protected Material managed by and/or stored with eDiscovery vendors or claims  
 7 administrators that maintain such an information security program.

8 If the Receiving Party discovers a breach of security, including any actual or suspected  
 9 unauthorized access, relating to another Party's Confidential Information and/or Protected Material,  
 10 the Receiving Party shall: (1) promptly provide written notice to Designating Party of such breach;  
 11 (2) investigate and take reasonable efforts to remediate the effects of the breach, and provide  
 12 Designating Party with assurances reasonably satisfactory to Designating Party that such breach  
 13 shall not recur; and (3) provide sufficient information about the breach that the Designating Party  
 14 can reasonably ascertain the size and scope of the breach. If required by any judicial or  
 15 governmental request, requirement or order to disclose such information, the Receiving Party shall  
 16 take all reasonable steps to give the Designating Party sufficient prior notice in order to contest such  
 17 request, requirement or order through legal means. The Receiving Party agrees to cooperate with  
 18 the Designating Party or law enforcement in investigating any such security incident. In any event,  
 19 the Receiving Party shall promptly take all necessary and appropriate corrective action to terminate  
 20 the unauthorized access.

### 21 13. FINAL DISPOSITION

22 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
 23 Receiving Party must return all Confidential Information and/or Protected Material to the Producing  
 24 Party or destroy such material. As used in this subdivision, "all Confidential Information and/or  
 25 Protected Material" includes all copies, abstracts, compilations, summaries, and any other format  
 26 reproducing or capturing any of the Confidential Information and/or Protected Material. Whether  
 27 the Confidential Information and/or Protected Material is returned or destroyed, the Receiving Party  
 28 must submit a written certification to the Producing Party (and, if not the same person or entity, to

the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Confidential Information and/or Protected Material. Notwithstanding the above:

(a) Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Confidential Information and/or Protected Material. Any such archival copies that contain or constitute Confidential Information and/or Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

(b) If any information or items designated as “CONFIDENTIAL” and produced by another Party or Non-Party has been loaded into any litigation review database, the attorney for the party using such database shall have the responsibility of ensuring that all such information (including all associated images and native files) is extracted from such databases (including any associated staging databases) and destroyed. “Destroyed” shall mean deletion of documents from all databases, applications and/or file systems in a manner such that they are not readily accessible without the use of specialized tools or techniques typically used by a forensic expert.

(c) The Parties, counsel of record for the Parties, and experts or consultants for a Party shall not be required to return or to destroy any information or items designated as “CONFIDENTIAL” to the extent such information is (i) stored on media that is generally considered not reasonably accessible, such as disaster recovery backup tapes, or (ii) only retrievable through the use of specialized tools or techniques typically used by a forensic expert; provided that to the extent any such information is not returned or destroyed due to the foregoing reasons, such information or items designated in this action as “CONFIDENTIAL” shall remain subject to the confidentiality obligations of this Stipulated Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

*(Signatures of counsel appear on the following page.)*

////

1 Dated: April 21, 2015

2  
3 /s/ Kiley L. Grombacher  
4 KILEY L. GROMBACHER  
5 MARLIN & SALTZMAN  
6 Attorneys for Plaintiff  
7 TYWAIN WILLIS

8 Dated: April 21, 2015

9 /s/ Jerrilyn T. Malana  
10 JERRILYN T. MALANA  
11 LITTLER MENDELSON, P.C.  
12 Attorneys for Defendants  
13 AVIS BUDGET GROUP, INC., AVIS  
14 BUDGET CAR RENTAL, LLC, and AB CAR  
15 RENTAL SERVICES, INC.

16 I attest that all other signatories listed, and on whose behalf the filing is submitted,  
17 concur in the filing's content and have authorized the filing.

18 Dated: April 21, 2015

19 /s/ Jerrilyn T. Malana  
20 JERRILYN T. MALANA  
21 LITTLER MENDELSON, P.C.  
22 Attorneys for Defendants  
23 AVIS BUDGET GROUP, INC., AVIS  
24 BUDGET CAR RENTAL, LLC, and AB CAR  
25 RENTAL SERVICES, INC.

26 \* \* \*

27 PURSUANT TO STIPULATION, IT IS SO ORDERED.

28 Dated: 4/22/2015

Haywood S. Gull, Jr.  
UNITED STATES DISTRICT JUDGE

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in  
 its entirety and understand the Stipulated Protective Order that was issued by the United States  
 District Court for the Northern District of California on [date] in the case of *Tywain Willis v. Avis  
 Budget Group, Inc., et al.*, Case No. 14-cv-03926-HSG (JCS). I agree to comply with and to be  
 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that  
 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I  
 solemnly promise that I will not disclose in any manner any information or item that is subject to this  
 Stipulated Protective Order to any person or entity except in strict compliance with the provisions of  
 this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
 \_\_\_\_\_ [print or type full address and telephone number] as  
 my California agent for service of process in connection with this action or any proceedings related  
 to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

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**WILLIS V. AVIS BUDGET GROUP, INC., ET AL.**  
 USDC-Northern District - Case No. 3:14-cv-03926-KAW

**PROOF OF SERVICE**

I, MARIA RUVALCABA, certify and declare as follows: I am employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 501 West Broadway, Suite 900, San Diego, California 92101.3577.

On April 21, 2015, I caused the following documents:

**STIPULATED PROTECTIVE ORDER WITH CLAWBACK AGREEMENT**

To be electronically filed with the Clerk of the Court through the Court's CM/ECF system. It is my understanding that the CM/ECF system will automatically send a "Notice of Electronic Filing" to the registered users in the case and that the "Notice of Electronic Filing" will constitute service of the above-listed document(s) on the following:

Shaun Setareh, Esq. Setareh Law Group 9454 Wilshire Boulevard, Suite 907 Beverly Hills, CA 90212 Attorney for Plaintiff	<a href="mailto:shaun@setarehlaw.com">shaun@setarehlaw.com</a>
Tuvia Korobkin, Esq. Setareh Law Group 9454 Wilshire Boulevard, Suite 907 Beverly Hills, CA 90212 Attorney for Plaintiff	<a href="mailto:tuvia@setarehlaw.com">tuvia@setarehlaw.com</a> <a href="mailto:tko@laborlitigators.com">tko@laborlitigators.com</a>
Neil Larsen, Esq. Setareh Law Group 9454 Wilshire Boulevard, Suite 907 Beverly Hills, CA 90212 Attorney for Plaintiff	<a href="mailto:neil@setarehlaw.com">neil@setarehlaw.com</a>
Marlin @ Saltzman, LLP Marcus J. Bradley, Esq. Kiley L. Grombacher, Esq. 29229 Canwood Street, Suite 208 Agoura Hills, CA 91201	<a href="mailto:mbradley@marlinsaltzman.com">mbradley@marlinsaltzman.com</a> <a href="mailto:kgrombacher@marlinsaltzman.com">kgrombacher@marlinsaltzman.com</a>

1 I declare that I am employed in the office of a member of the bar of this court at  
2 whose direction the service was made. Executed on April 21, 2015, at San Diego, California.  
3

4   
5 Maria Ruvalcaba

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